

Letter of Findings: 04-20120505
Gross Retail Tax
For the Years 2009, 2010, and 2011

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ISSUE

I. Boat and Trailer Sales – Gross Retail Tax

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-2(a); IC § 6-2.5-4-1(e); IC § 6-2.5-6-7; IC § 6-2.5-9-3; IC § 6-2.5-13-1; IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 2.2-2-2](#).

Taxpayer argues that it was not required to collect sales tax when it sold boat trailers and boats to Indiana customers.

STATEMENT OF FACTS

Taxpayer is an out-of-state business which sells boats, boat trailers, and boat supplies. The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records. The audit found that Taxpayer owed sales and use tax. Taxpayer disagreed with the proposed assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

I. Boat and Trailer Sales – Gross Retail Tax

DISCUSSION

Taxpayer failed to collect Indiana sales tax when it sold boats and trailers to Indiana customers. These customers had presented Taxpayer with an exemption certificate from Taxpayer's own home state. The result was that the Indiana customers paid Taxpayer neither Indiana sales tax nor the out-of-state location's sales tax.

Although Taxpayer is located outside Indiana, the audit found that Taxpayer had delivered boats and trailers to its Indiana customers and that Taxpayer was liable for the uncollected tax.

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-3-2(a). A complementary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC § 6-2.5-3-2.

[45 IAC 2.2-2-2](#) states that the retail merchant must collect the tax in its role as an agent for the state. When the retail merchant fails to collect the tax, IC § 6-2.5-9-3 provides that the retail merchant is liable for the payment of the tax. See also IC § 6-2.5-6-7.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Under Indiana law, Taxpayer erred when it failed to collect sales tax when it delivered boats, trailers, and other merchandise to Indiana customers because the Indiana customers took possession of the items in Indiana. As set out in IC § 6-2.5-4-1(e), "[A] transfer is considered to have occurred after delivery of the property to the purchaser." See also IC § 6-2.5-13-1 (defining "receive" and "receipt" as "taking possession of tangible personal property.") Taxpayer delivered boats, trailers, and equipment to Indiana customers; the underlying transactions were subject to this state's sales tax.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 02/27/2013 by Legislative Services Agency
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